

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of
Paul DeMoss,
Paul DeMoss Trading as 1-800-AMERICA,
and
America's Gift Foundation, Inc.,
Complainants,
v.
Sprint Communications Company, L.P.,
Defendant.

File No. EB-05-TC-F-009

MEMORANDUM OPINION AND ORDER

Adopted: April 7, 2008

Released: April 7, 2008

By the Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this Order, we grant in part a Complaint filed by Paul S. DeMoss, Paul S. DeMoss t/a 1-800-AMERICA, and America's Gift Foundation, Inc. ("AGF") (collectively "DeMoss") against Sprint Communications Company, L.P. ("Sprint" or "Defendant"). The complaint alleges that DeMoss acquired the toll-free numbers 800-AMERICA and 888-AMERICA ("AMERICA toll-free numbers") as a part of a business plan, that Sprint agreed to act as the responsible organization ("RespOrg") for the numbers, and that Sprint transferred the right to use the toll-free numbers on two occasions to a third party without DeMoss's consent, in violation of Sections 201(b) and 202(a) of the Communications Act of 1934, as amended ("the Act"), and several Commission orders dealing with the assignment of toll-free numbers. DeMoss requests: (1) that the toll-free numbers be re-assigned to DeMoss; (2) that the Federal Communications Commission ("FCC" or "Commission") fine Sprint one million dollars (\$1,000,000) for its alleged misrepresentations to the Commission; and (3) that we

1 The Commission's rules define a "Responsible Organization" as "the entity chosen by a toll free subscriber to manage and administer the appropriate records in the toll free Service Management System for the toll free subscriber." 47 C.F.R. § 52.101(b).

2 47 U.S.C. §§ 201(b), 202(a).

3 DeMoss et al. v. Sprint Communications Company, L.P., Complaint, File No. EB-05-TC-F-009 (Oct. 21, 2005) ("Complaint").

conduct a separate proceeding pursuant to section 1.722 of the rules to determine damages.⁴ For the reasons set forth below, we find that Sprint violated section 201(b) when it negligently disconnected the AMERICA toll-free numbers on July 18, 2003. With respect to the remaining alleged violations, we find that DeMoss has failed to satisfy his burden of proof. Because we have found liability in this bifurcated proceeding, DeMoss now has the right to file a supplemental complaint for damages pursuant to section 1.722 of the Commission's rules.

II. BACKGROUND

2. On March 12, 1999, in Toronto, Canada, DeMoss entered into a private agreement with a Canadian citizen to purchase a marketing plan for a business that was associated with use of the AMERICA toll-free numbers.⁵ According to DeMoss, the toll-free number 800-AMERICA would serve under this plan as a central contact point for charitable contributors and volunteers, as well as those in need of charitable information and debt relief.⁶ DeMoss also states that he intended 888-AMERICA to be used by agencies such as the Federal Emergency Management Administration for communication during national emergencies.⁷

3. DeMoss stated that on March 29, 1999, he requested a RespOrg change for these numbers from Bell Canada to Sprint.⁸ Sprint acknowledged receipt of the AMERICA toll-free number transfers on April 12, 1999. Sprint apparently billed DeMoss from May 1999 through December 2002 without actual service activation, and during this time frame, in order to protect his interest in the AMERICA toll-free numbers, DeMoss paid the bills for the toll-free services.⁹ DeMoss maintains that Sprint finally activated the numbers in December 2002.¹⁰ According to DeMoss, Sprint also agreed to either credit DeMoss's account, or issue a check to DeMoss for the 44 months during which Sprint billed DeMoss but did not provide service.

4. Sprint's records indicate that, in its January – March 2003 bills, Sprint notified DeMoss of past due amounts.¹¹ Because of this three-month nonpayment, Sprint suspended DeMoss's account in April 2003. DeMoss maintains, however, that he did not pay during January – March 2003 because he believed the credit apparently owed to his account for the previous 44 months satisfied the balances due.¹² Nonetheless, on April 24, 2003, DeMoss made a payment to his account using a credit card, and Sprint restored the account on or about May 1, 2003.

5. According to Sprint, while the April bill did not reflect any charges, the May bill once again showed a past due amount.¹³ Sprint states that sometime in May – June 2003, DeMoss or one of his representatives called Sprint and requested that the charges be billed to a credit card account. Sprint billed

⁴ Complaint at 15.

⁵ Complaint at 7.

⁶ *Id.* at 14.

⁷ *Id.* The AMERICA toll-free numbers are mnemonics for 800-263-7422 and 888-263-7422.

⁸ *Id.* at 8. As relevant here, Sprint operates as a RespOrg under U.S. law. *See* 47 C.F.R. § 52.102(b)

⁹ Complaint at 9.

¹⁰ *Id.* at 9, Ex. C.

¹¹ *DeMoss et al. v. Sprint Communications Company, L.P.*, Answer, File No. EB-05-TC-F-009 (Mar. 14, 2006) (“Answer”) at 6.

¹² *DeMoss et al. v. Sprint Communications Company, L.P.*, Initial Brief, File No. EB-05-TC-F-009 (July 19, 2006) (“Compls. Brief”) at 5-6.

¹³ Answer at 7.

DeMoss's account for \$180, which resulted in a \$75 credit balance to DeMoss's account.

6. DeMoss asserts that although he did not receive bills for May and June 2003,¹⁴ he nevertheless contacted Sprint by phone on June 25, 2003, to make an advance payment for the next four to five months.¹⁵ DeMoss maintains that he told a Sprint employee at that time that he was closing his credit card account and that he would pay with a check by phone. DeMoss then made a payment of \$180 using an electronic check.

7. Because DeMoss's June 2003 bill reflected a \$46.86 usage charge, Sprint again attempted to bill DeMoss's account using DeMoss's closed credit card number rather than applying the \$75 credit balance.¹⁶ As a result, Sprint received notification from the associated banking institution on July 18, 2003, that DeMoss's credit card account was no longer valid.¹⁷ Sprint subsequently suspended DeMoss's account and blocked service to the toll-free numbers. On or about October 23, 2003, the numbers were assigned to another Sprint customer who then called Sprint to add the numbers to his existing toll-free Sprint services.¹⁸

8. DeMoss states, however, that Sprint continued to send him bills during July – November 2003 reflecting a "Credit Balance – Do Not Pay," and Sprint's records confirm this assertion.¹⁹ Sprint then billed DeMoss in December 2003 for \$40.86, after applying DeMoss's credit balance of \$12.28.

9. Both parties agree that on January 16, 2004, DeMoss called Sprint to inquire about the AMERICA toll-free numbers because DeMoss was not receiving calls to the designated access lines assigned to the account.²⁰ A Sprint representative immediately took the AMERICA toll-free numbers from a third party to whom the numbers had been assigned, and restored the AMERICA toll-free numbers to DeMoss.²¹

10. Sprint maintains that the third party user subsequently contacted a Sprint representative to contest the reassignment, which resulted in Sprint returning the toll-free numbers to the third party user on or around January 23, 2004.²² When DeMoss discovered that the toll-free numbers again did not terminate on the access lines assigned to his account, he contacted Sprint that same day.²³ On January 24, 2004, DeMoss spoke with Sprint's legal department, which stated, according to DeMoss, that because the account had been canceled in July 2003,²⁴ the toll-free numbers were reassigned to a third party and would not be returned to him.

11. Sprint's records reflect that Sprint continued to bill DeMoss from January 2004 to December

¹⁴ Complaint at Ex. C.

¹⁵ *DeMoss et al. v. Sprint Communications Company, L.P.*, Supplemental Complaint, File No. EB-05-TC-F-009 (Dec. 22, 2005) ("Supp. Complaint") at 8.

¹⁶ Answer at 7.

¹⁷ Answer at 7; Complaint at Ex. H.

¹⁸ Answer at 8; Complaint at Ex. H.

¹⁹ Complaint at Ex. C; Answer at Ex. II.

²⁰ Complaint at 9; Answer at 8.

²¹ Complaint at 9; Answer at 8.

²² Answer at 8.

²³ See Complaint at Ex. C, noting that DeMoss states that he discovered the reassignment on January 22, 2004.

²⁴ DeMoss states that the disconnection occurred on July 18, 2003. See Complaint at Ex. C.

2005, and that DeMoss made periodic payments to the account.²⁵ In addition, Sprint asserts that it credited DeMoss's account in the amount of \$1,611.08 for subsequent payments made after it suspended the account on July 18, 2003.

12. DeMoss filed an informal complaint with the Commission on June 24, 2004, requesting that Sprint reimburse DeMoss for past due charges, and that Sprint restore the toll-free numbers.²⁶ In the carrier's report, Sprint stated that it canceled DeMoss's account on July 18, 2003 because of a past due balance, and by the time the account was reactivated on October 23, 2003, an extensive amount of time had lapsed, resulting in the numbers being reassigned to a third party.²⁷ Further, its records did not indicate that DeMoss had contacted Sprint to dispute the charges on his bill.

13. DeMoss filed a formal complaint with the Commission on December 28, 2004, which the Commission rejected without prejudice on January 18, 2005 for failure to pay the filing fee as set forth in the Commission's rules.²⁸ DeMoss then filed a complaint with the Georgia Public Service Commission on May 12, 2005.²⁹

14. DeMoss refiled his formal complaint with the Commission on October 21, 2005, alleging that: (1) Sprint engaged in unreasonable and discriminatory practices in violation of sections 201(b) and 202 of the Communications Act by refusing to provide service through the toll-free telephone numbers 800-AMERICA and 888-AMERICA; and (2) Sprint engaged in misrepresentation to the Federal Communications Commission in its response to DeMoss's informal complaint, in violation of 18 U.S.C. section 1001 and 47 C.F.R. section 1.17.³⁰ DeMoss further requested a separate damages proceeding under 47 C.F.R. section 1.722(d).³¹

III. DISCUSSION

15. It is well established that the complainant has the burden of proof in a formal complaint proceeding under section 208 of the Act.³² Thus, to prevail, a complainant must demonstrate by a preponderance of the evidence that the alleged violation of the Act or the Commission's rules actually occurred.³³

²⁵ Answer at Ex. II.

²⁶ Complaint at 10.

²⁷ *Id.* at Ex. H.

²⁸ Letter from Kurt Schroeder, Telecommunications Consumers Division, Enforcement Bureau, to John Midlen, Jr., Counsel for Complainants, Midlen Law Center (Jan. 18, 2005).

²⁹ Supp. Complaint at 12.

³⁰ *Id.* at 3.

³¹ *Id.*

³² See 47 U.S.C. § 208; see also *Directel, Inc. v. American Telephone and Telegraph Company*, Memorandum Opinion and Order, 11 FCC Rcd 7554, 7560-61, ¶ 14-15 (1996); *Amendment of Rules Governing Procedures to be Followed when Formal Complaints are Filed Against Common Carriers*, Report and Order, 12 FCC Rcd 22497 (1997); *Amendment of Rules Concerning Procedures to be Followed when Formal Complaints are Filed Against Common Carriers*, Report and Order, 8 FCC Rcd 2614 (1993); *Connecticut Office of Consumer Counsel v. AT&T Communications*, Memorandum Opinion and Order, 4 FCC Rcd 8130 (1989), *aff'd sub nom. Connecticut Office of Consumer Counsel v. FCC*, 915 F.2d 75 (2d Cir. 1990), *cert. denied*, 499 U.S. 920 (1991). See generally 47 C.F.R. §§ 1.720-1.735.

³³ See, e.g., *Sea Island Broadcasting Corp. of S.C. v. FCC*, 627 F.2d 240, 243 (D.C. Cir. 1980); see also *Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended*, First Report and

A. Statute of Limitations Issue

16. We begin by addressing a threshold issue asserted by Sprint. Sprint raises, as an affirmative defense, the requirement under Section 415(b) of the Act that all complaints against carriers for the recovery of damages be filed with the Commission within two years from the time the cause of action accrues.³⁴ According to Sprint, DeMoss's complaint was filed outside this statute of limitations.³⁵ We disagree and conclude that DeMoss's complaint against Sprint was filed within two years of the accrual of DeMoss's cause of action.

17. The relevant dates are as follows. On July 18, 2003, Sprint disconnected the AMERICA toll-free numbers from DeMoss.³⁶ According to DeMoss, during this time period Sprint sent invoices for the toll-free numbers covering service from July – November 2003 that stated, "Credit Balance – Do Not Pay."³⁷ Further, the record indicates that Sprint continued to send invoices for the toll-free numbers to DeMoss through December 2005.³⁸ The parties agree that DeMoss did not realize that the toll-free numbers had been disconnected until January 16, 2004.³⁹ DeMoss filed his complaint against Sprint on October 21, 2005.

18. In determining when DeMoss's cause of action accrued, we apply the "discovery-of-injury" rule.⁴⁰ That is, DeMoss's cause of action accrued when he discovered, or with due diligence should have discovered, that he had been injured. In this case, the parties agree that DeMoss did not actually discover the disconnection of the toll-free numbers until January 16, 2004, which would bring the filing of the Complaint on October 21, 2005 well within the two-year statute of limitations. At least as long as Sprint was continuing to bill DeMoss for service to the toll-free numbers, DeMoss's failure to realize that the toll-free numbers were out of service was not unreasonable. There is no indication in the record that Sprint ever affirmatively informed DeMoss that the toll-free numbers had been disconnected. Indeed, the record indicates that Sprint sent bills to DeMoss during the time period in question, July – November 2003, indicating that he did not need to pay because of a credit balance. In fact, it wasn't until January 16, 2004 that he discovered from a Sprint representative that the AMERICA toll-free numbers had been reassigned to another customer. Sprint, who bears the burden of proof on this affirmative defense, has failed to indicate otherwise. As set forth above, DeMoss's cause of action accrued when he should have, with due diligence, discovered that he had been injured. Accordingly, we find that DeMoss's cause of action accrued no sooner than January 16, 2004, the date at which DeMoss discovered the service disconnections from a Sprint representative, which puts the complaint within the two-year limitations period.

Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 21905, 21068, ¶ 337 (1996); *Bender v. Clark*, 744 F.2d 1424 (10th Cir. 1984) (stating that "the traditional standard required in a civil or administrative proceeding is proof by a preponderance of the evidence").

³⁴ Answer at 16; *see also* 47 U.S.C. § 415(b).

³⁵ Answer at 17.

³⁶ Complaint at Ex. H.

³⁷ *Id.* at Ex. C.

³⁸ Supp. Complaint at 6; Answer at Ex. II.

³⁹ Complaint at 9; Answer at 8.

⁴⁰ *See MCI Telecommunications Corp. v. FCC*, 59 F.3d 1407 (1995) (holding that "discovery-of-injury" rule, rather than "time-of-injury" rule, applied in Section 208 complaint case); *see also Communications Vending Corp. of Arizona, Inc. v. FCC*, 365 F.3d 1064 (D.C. Cir. 2004).

B. Whether Sprint Violated Sections 201(b) and 202(a) of the Communications Act

19. DeMoss contends that Sprint engaged in unreasonable and discriminatory practices in violation of sections 201(b) and 202(a) of the Communications Act,⁴¹ by disconnecting service through the AMERICA toll-free telephone numbers 800-AMERICA and 888-AMERICA on July 18, 2003. Further, DeMoss contends that when Sprint took the AMERICA toll-free numbers a second time, it committed willful misconduct.⁴² We find that Sprint acted negligently in disconnecting the AMERICA toll-free numbers on July 18, 2003, and as such, Sprint's action was unreasonable in violation of section 201(b) of the Communications Act. But, DeMoss fails to persuade us by a preponderance of the evidence that Sprint's negligent act amounted to discrimination against DeMoss in violation of section 202(a). We also are not persuaded by the record evidence presented that Sprint's second disconnection of the AMERICA toll-free numbers constituted willful misconduct resulting in a violation of sections 201(b) and 202(a) of the Communications Act.

1. Whether Sprint Violated Sections 201(b) or 202(a) in Disconnecting the AMERICA Toll-Free Numbers on July 18, 2003

20. On the issue of negligence, Sprint admits that it disconnected the toll-free numbers from DeMoss on July 18, 2003, but asserts that this action was due to an invalid credit card payment.⁴³ Our review of the record, however, shows that at the time that Sprint used the credit card number to satisfy the July 2003 bill, DeMoss's account reflected a credit balance of \$75, which was sufficient to cover the \$46.86 usage charges owed.⁴⁴ Sprint offers no credible explanation as to why it attempted to use DeMoss's credit card number to pay usage charges owed on the July 2003 bill, rather than applying the sufficient credit balance available on DeMoss's account.

21. DeMoss asserts that, on June 25, 2003, prior to Sprint using his credit card number for payment of the July bill, he specifically instructed a Sprint representative by phone that he would no longer use the credit card number and would pay by electronic check.⁴⁵ Finally, DeMoss asserts that even though Sprint suspended his account because of the invalid credit card number, Sprint failed to notify DeMoss, and continued to send monthly bills from July – November 2003 indicating a credit balance. Indeed, DeMoss did not learn that the toll-free numbers had been reassigned until he called a Sprint representative on January 16, 2004.⁴⁶ Sprint asserts that its failure to notify DeMoss of the suspension was an inadvertent error.⁴⁷

22. After a thorough review of the record, we find that Sprint did err in attempting to use the credit card for the July 2003 monthly bill payment, because DeMoss timely instructed Sprint otherwise, and we further find that Sprint erred in failing to notify DeMoss when Sprint placed his account in disconnect status. In addition, Sprint erred in attempting to charge DeMoss for service when his account reflected a balance that would satisfy the usage charges owed for the July 2003 bill. Because Sprint offers no plausible explanation for these discrepancies, and offers no credible basis to rebut the assertion that its actions were at least negligent, we find in

⁴¹ 47 U.S.C. §§ 201(b), 202(a).

⁴² Compls. Brief at 20.

⁴³ Complaint at Ex. H; Answer at 7.

⁴⁴ Complaint at Ex. I; Answer at II.

⁴⁵ Supp. Complaint at 8.

⁴⁶ Complaint at 9, Ex. C.

⁴⁷ *DeMoss et al. V. Sprint Communications Company, L.P.*, Initial Brief, File No. EB-05-TC-F-009 (June 30, 2006) (“Def. Brief”) at 10.

favor of DeMoss and conclude that Sprint acted negligently in disconnecting the toll-free numbers on July 18, 2003.

23. DeMoss further asserts that Sprint's negligent act was unreasonable in violation of section 201(b) of the Communications Act. Section 201(b) of the Communications Act requires that all "charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable, and any such charge, practice, classification, or regulation that is unjust or unreasonable is...unlawful."⁴⁸ In our *Staton Holdings* order, we found that the negligent disconnection of a toll-free number constituted an unjust and unreasonable practice under section 201(b) of the Act.⁴⁹ We likewise conclude here that Sprint's negligent disconnection of the AMERICA toll-free numbers constituted an unjust and unreasonable practice within the meaning of section 201(b), and therefore find that Sprint has violated section 201(b) of the Communications Act.

24. DeMoss also asserts that Sprint engaged in discriminatory practices in violation of section 202(a) of the Communications Act when it disconnected the AMERICA toll-free numbers on July 18, 2003.⁵⁰ In support of this claim, DeMoss states that he paid for a service that he did not receive, while other Sprint customers paid for and received service.⁵¹ Further, DeMoss contends that while other Sprint customers were afforded written notice of any delinquencies and provided the opportunity to cure the same, DeMoss was not given that opportunity and was instead disconnected without notice on July 18, 2003.⁵²

25. Sprint maintains that DeMoss failed to cite precedent in support of his claim, and that this billing error is insufficient to establish that Sprint unjustly or unreasonably discriminated against DeMoss.⁵³ Sprint further notes that billing errors do occur, and that customers are responsible for reviewing their bills for accuracy and contacting their carriers about any discrepancies.

26. Section 202(a) of the Communications Act makes it unlawful for any common carrier to discriminate unjustly or unreasonably among customers in its provision of "like communications service."⁵⁴ In making this determination, the Commission applies a three-step inquiry: (1) whether the services at issue are "like"; (2) if they are, whether there are differences in the terms and conditions pursuant to which the services are provided; and (3) if so, whether the differences are reasonable.⁵⁵ Complainants have the burden of establishing the first two components of the test, after which the burden shifts to the Defendant to demonstrate that any discrimination is reasonable.⁵⁶

⁴⁸ 47 U.S.C. § 201(b).

⁴⁹ *Staton Holdings, Inc. v. MCI WorldCom Communications, Inc.*, 19 FCC Rcd 8699, 870-05 (Enf. Bur. May 13, 2004) (stating that MCI's negligent disconnection constituted an unjust and unreasonable practice within the meaning of Section 201(b) of the Communications Act).

⁵⁰ Supp. Complaint at 3.

⁵¹ *DeMoss et al. v. Sprint Communications Company, L.P.*, Response, File No. EB-05-TC-F-009 (Mar. 27, 2006) ("Response") at 1.

⁵² *Id.* at 2.

⁵³ Def. Brief at 8.

⁵⁴ 47 U.S.C. § 202(a).

⁵⁵ *Gilmore et al. v. Southwestern Bell Mobile Systems, L.L.C.*, 20 FCC Rcd 15079, 15086 (2005).

⁵⁶ *Id.* at 15086-87.

27. While DeMoss alleges that Sprint treats other Sprint customers differently in its provision of like services, DeMoss fails to identify and document specific cases in which Sprint treated other customers differently from DeMoss. To simply make a statement claiming discrimination based on an unsupported general comparison between DeMoss's Sprint service and that of the entire Sprint customer base is insufficient to sustain a claim under the first two components of the section 202(a) discrimination analysis. Because DeMoss fails to meet his burden of proof under the first two components, we need not address Sprint's burden under the third component. We therefore conclude that DeMoss has failed, by a preponderance of the evidence, to demonstrate that Sprint violated section 202(a) of the Communications Act.

2. Whether Sprint's Second Disconnection of the AMERICA Toll-Free Numbers Amounted to Willful Misconduct

28. Turning to the issue of willful misconduct, the record indicates that, after speaking with DeMoss on January 16, 2004, Sprint took the toll-free numbers from the third party to whom the numbers had been reassigned, and restored the numbers to DeMoss.⁵⁷ Shortly thereafter, the third party contacted Sprint requesting that the toll-free numbers be restored to his account, and Sprint immediately complied on January 23, 2004. When DeMoss contacted Sprint about this second disconnection around that same time, Sprint said that it had erroneously reassigned the toll-free numbers to DeMoss, and that the toll-free numbers would not be returned. According to DeMoss, this second disconnection from him and assignment to a third party amounted to an intentional act that rises to the level of willful misconduct.⁵⁸

29. In reviewing the totality of the circumstances on this claim, we conclude that DeMoss has failed to present legal arguments to persuade us that Sprint's second disconnection of the AMERICA toll-free numbers from DeMoss and reassignment to a third party constituted willful misconduct. Although we have already found that there were anomalies in Sprint's original reassignment of the numbers from DeMoss to the third party, there is nothing in the record to suggest that the third party is anything other than a completely innocent subscriber to the numbers in question. Hence, in January 2004, Sprint merely acted quickly to restore the subject toll-free numbers to that innocent third party subscriber. Based on the foregoing, we find that DeMoss failed to present plausible evidence demonstrating that Sprint's action constituted willful misconduct that was unreasonable and discriminatory in violation of sections 201(b) and 202 of the Communications Act.⁵⁹

C. DeMoss's Claim of a Proprietary Interest in the AMERICA Toll-Free Numbers

30. DeMoss states that because he has a "proprietary and possessory interest" in the AMERICA toll-free numbers, he is entitled to a Commission order restoring the toll-free numbers to him.⁶⁰ First, we find that DeMoss actually has no such interest in these numbers because the Commission has long characterized telephone numbers as a public resource in which there is no proprietary ownership interest.⁶¹ Further, although this

⁵⁷ Complaint at 9-10; Answer at 8.

⁵⁸ Complaint at 20. Specifically, DeMoss states that "a mistake of law never excuses an action, as all persons are presumed to know the law. Mistakes of fact only excuse the intentional act when the mistake is mutual." Complaint at 21; *see also Charter Communications VI, LLC v. Eleazer*, 412 F.Supp. 2d 588,594 (S.D. W.Va. 2006).

⁵⁹ 47 U.S.C. §§ 201(b), 202(a).

⁶⁰ Supp. Complaint at 10. DeMoss also cites sections 260(b), 274(e)(2), 275(c), and 312(b), but fails to state how each provision is applicable to the instant proceeding.

⁶¹ *In the Matter of Toll Free Access Codes, Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 11162, 11185-86 (1997); *In the Matter of Toll Free Access Codes, Notice of Proposed Rulemaking*, 10 FCC Rcd 13692, 13702-03 (1995).

longstanding Commission policy is dispositive of this issue, we also note that DeMoss has failed to submit documentation in support of this claim. DeMoss references selected portions of Sprint's FCC Tariff No. 1, section 2.3.1(A), and selected portions of the Industry Guidelines for Toll-Free Number Administration,⁶² but he fails to present these documents as a part of the record, in accordance with sections 1.720(f) and (h), and 1.721(a)(11) of the Commission's rules.⁶³

D. Remedies

1. Whether Equity Requires the Return of the AMERICA Toll-Free Numbers to DeMoss

31. In seeking equitable relief, DeMoss asks that we order Sprint to reinstate the AMERICA toll-free numbers to him. The relief that DeMoss seeks, however, obviously cannot be granted without causing harm to the current user of the subject toll-free numbers. In the judicial context, it is an "age-old principle that in formulating equitable relief a court must consider the effects of the relief on innocent third parties."⁶⁴ In light of this general equitable principle, we find that we must balance the equities of granting the relief requested by DeMoss against the harm to a third party if that relief is granted, keeping in mind our finding that DeMoss has no proprietary ownership interest in the numbers under the Commission's longstanding policy.⁶⁵

32. The record shows that on October 23, 2003, the AMERICA toll-free numbers were assigned to a Sprint customer who had called Sprint to add the numbers to his existing toll-free Sprint services.⁶⁶ There is no evidence in this record to suggest that the third party is anything other than completely innocent in the matter. We also note that the current holder of the AMERICA toll-free numbers is not a party to this proceeding and has had no opportunity to offer facts and arguments against reassignment of the numbers to DeMoss. The record therefore contains little information on how a reassignment to DeMoss now might harm that party.⁶⁷

33. Turning to DeMoss, there is no doubt that he has suffered some harm as a result of the loss of the AMERICA toll-free numbers caused by Sprint's negligent disconnection of service. At the same time, however, we consider a number of facts weighing against return of the numbers to DeMoss. First, DeMoss maintains that his company, AGF, is totally dependent on the AMERICA toll-free numbers, and that they are AGF's brand, storefront and pathway to revenue.⁶⁸ DeMoss also asserts that certain calling campaigns have been unable to proceed,⁶⁹ and that resulting monetary damages total in the tens of millions of dollars.⁷⁰ DeMoss presents no evidence to support his claims. Accordingly, because DeMoss's claims appear to be based on speculative

⁶² Supp. Complaint at 9.

⁶³ 47 C.F.R. §§ 1.720(f), (h), 1.721(a)(11).

⁶⁴ *In re Envirodyne Indus.*, 29 F.3d 301, 303 (7th Cir. 1994) (citing *International Brotherhood of Teamsters v. United States*, 431 U.S. 324 (1977)).

⁶⁵ See para. 30, *infra*.

⁶⁶ Answer at Appendix A; Complaint at Ex. H.

⁶⁷ Sprint has submitted information in response to Complainant's Interrogatory No. 3 showing only that the third party is not receiving a large number of calls from the subject toll-free numbers. See Defendant's Response to Complainant's Interrogatory No. 3.

⁶⁸ Complaint at 14.

⁶⁹ Response at 5.

⁷⁰ Complaint at 15.

predictions about operations that have largely not commenced, they do not sufficiently justify returning the toll-free numbers to him. Further, the record also reveals that after the AMERICA toll-free numbers were activated, but before their reassignment to the third party, DeMoss apparently made little use of the numbers.⁷¹

34. We recognize that Sprint is faced with a delicate balancing act between DeMoss and an innocent third party. We have previously observed that it is reasonable for a carrier, when faced with an alleged clerical error that results in disconnecting toll-free numbers from one customer and reassigning those numbers to another, to attempt to reach a satisfactory accommodation with the first customer while avoiding inconvenience to the other customer.⁷² It appears from the record that Sprint attempted to work toward this end when it made an effort to refund DeMoss for any monthly recurring charges and overpayments.⁷³ DeMoss, however, appears to have rejected Sprint's offer.⁷⁴

35. Considering all of these factors, we find that the balancing of equities here weighs in favor of leaving the AMERICA toll-free numbers with the entirely innocent third party. DeMoss, who bears the burden of proof, has not persuaded us that it would be most equitable to take the numbers from the third party and give them to DeMoss. Accordingly, we deny the equitable relief that DeMoss requests.

2. DeMoss's Request for Other Relief and Damages.

36. DeMoss requests that the Commission fine Sprint not less than one million dollars (\$1,000,000) for its misrepresentations to the Commission.⁷⁵ Sections 206-208 of the Act establish private remedies for parties aggrieved by carriers, while section 503(b) of the Communications Act gives the Commission the discretion to assess forfeitures payable to the United States.⁷⁶ Accordingly, a formal complaint proceeding under sections 206-208 of the Communications Act is not an appropriate venue for the Commission's imposition of forfeitures. If the Commission determines that Sprint's alleged misrepresentations warrant the issuance of a notice of apparent liability for forfeiture under section 503(b) of the Act, the Commission will do so in a separate proceeding.⁷⁷

37. DeMoss has stated an intention to pursue damages in a separate proceeding pursuant to section 1.722.⁷⁸ Because we have found liability here, DeMoss may now file a supplemental complaint with the Commission that complies with sections 1.721(e) and 1.722(h) of the Commission's rules within sixty (60) days from the release of this order.⁷⁹

IV. ORDERING CLAUSES

38. Accordingly, IT IS ORDERED, pursuant to Sections 4(i), 4(j), 201, 202 and 208 of the

⁷¹ Complaint at Ex. K; Answer at Ex. II.

⁷² *Erdman Technologies Corp. v. US Sprint Communications Company*, 11 FCC Rcd 6339, 6342 (May 29, 1996).

⁷³ Answer at 10.

⁷⁴ Response at 9.

⁷⁵ Complaint at 15.

⁷⁶ 47 U.S.C. §§ 208, 503(b); 47 C.F.R. § 1.80(e).

⁷⁷ See *Halprin v. MCI Telecommunications Corp.*, Memorandum Opinion and Order, 13 FCC Rcd 22568, 22581, ¶ 29 (1998).

⁷⁸ Complaint at 15.

⁷⁹ See 47 C.F.R. § 1.722(d), (h).

Communications Act of 1934 as amended, 47 U.S.C. §§ 154(j), 201, 202, 208, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311, that the above-captioned formal complaint IS GRANTED to the extent set forth herein.

39. IT IS FURTHER ORDERED, pursuant to sections 4(i), 4(j), and 208 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), and 208, that Sprint Communications Company, L.P.'s Motion to Dismiss filed on March 14, 2006 IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Genaro Fullano
Deputy Chief, Enforcement Bureau